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Not Your Average Summer Camp: Children in Immigration Detention

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NOT YOUR AVERAGE SUMMER CAMP: CHILDREN IN IMMIGRATION DETENTION

CINDY IZQUIERDO*

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* St. Mary’s University School of Law, J.D., expected May 2020; University of Maryland, B.S., Political Science, December 2011; Montgomery College, A.A., International Studies, May 2009. The author wishes to express her love and appreciation for her son, Matthew, whose witty sense of humor inspired the title of this piece. Thank you to my husband, Mario, for his support and patience throughout this entire journey. To my mother who sacrificed it all to bring me to America, and for that I am grateful. To the advocates at Catholic Charities of Central Texas, especially Nai Leite Da Silva, who provided the initial guidance from which this piece germinated. To *The Scholar: St Mary’s Law Review on Race and Social Justice* Volume 21 and Volume 22 Editorial Boards for their valuable insight and contributions to this piece. To all of the individuals in the legal and law school community whose feedback shaped this Comment. Finally, to all of the children who have endured brutal acts of abuse, may you rise against all odds: “when the world says, give up, hope whispers, try it one more time.” —King Tutankhamun

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INTRODUCTION

*Give fair judgement to the poor and the orphan; uphold the rights of the oppressed and the destitute. Rescue the poor and helpless; deliver them from the grasp of evil people.*¹

Plagued by a decade long civil war, funded by the United States government, the United States was a main contributor to the violence that engendered the deaths and displacement of many Salvadorans.² Post-war, a massive and catastrophic wave of prolonged gang violence erupted in the streets of El Salvador.³ The United States was amid the plight of displaced Central American immigrants all along; from contributing billions to corrupt Central American governments, to firearm trafficking, and arming the criminal syndicates that commit violent crimes against children.⁴ The wave of violence correlated with the mass deportations in

1. *Psalms* 82:3–4 (New Living Translation).

2. See Jessica Farber, *War in Peace: Exploring the Roots of El Salvador's Gang Violence*, COUNCIL ON HEMISPHERIC AFFAIRS (July 18, 2016), <http://www.coha.org/wp-content/uploads/2016/07/War-in-Peace-for-website.pdf> [<https://perma.cc/7GQY-84WX>] (recognizing El Salvador's twelve-year battle between leftist guerrilla forces and a U.S. funded right-wing military government which killed over 75,000 civilians and displaced at least one million).

3. See Farber, *supra* note 2 (describing the aftermath of El Salvador's twelve-year battle).

4. See *id.* (alleging the United States gave roughly \$6 billion to the Salvadoran military authoritarian regime, who is responsible for the slaying and disappearance of Salvadoran civilians); see also MARAS: GANG VIOLENCE AND SECURITY IN CENTRAL AMERICA 25–26

the late 1990s that resulted from the Illegal Immigration Reform and Immigration Responsibility Act of 1996.⁵ The gang violence in the impoverished streets of the northern triangle countries mirrored what began on American soil in the streets of Los Angeles.⁶ The gang MS-13 resulted from a type of culture shock, as Salvadoran immigrant youth struggled to assimilate to city life in Los Angeles.⁷ Most were undocumented and the prey of many local gangs.⁸ MS-13 formed as a social group that furnished some level of protection, assistance, association and connections for the arriving and unassimilated Salvadoran immigrant youth.⁹ It gave the local youth an alternative affiliation from the 18th Street Gang and encouraged those who had been recruited by local gangs, to leave the gangs.¹⁰ MS-13 is among the most infamous of the international Latino street gangs.¹¹ They will continue to maintain their reputation as an infamous gang, as deportations from the United States to Central America continue.¹² Deportations further gang behavior because one contributing factor is America's demand for illegal drugs—a lucrative business that entices gang members.¹³

(Thomas Bruneau et al. eds., Univ. of Tex. Press 2011) (discussing how the gang MS-13 is often portrayed as a byproduct of the effects of El Salvador's bloody civil war, when, in fact, it is a repercussion of urban gang dynamics); Steven Dudley et al., *Firearms Trafficking in Honduras*, INSIGHT CRIME (Aug. 23, 2017), <https://www.insightcrime.org/images/PDFs/2017/Firearms-Trafficking-Honduras.pdf> [<https://perma.cc/PW8G-UYSZ>] (recognizing the United States is the source of almost half of the unregistered weapons seized in Honduras); CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., *GANGS IN CENTRAL AMERICA* 7 (Aug. 29, 2016) (highlighting 39,000 students in El Salvador dropped out of school in 2015 due to threats and harassment by gangs).

5. See SEELKE, *supra* note 4, at 3 (describing the expansion of gang presence in Central America).

6. See *id.* (contending those deported from the United States during the Illegal Immigration Reform and Immigration Responsibility Act of 1996, diffused a Los Angeles gang culture to Central America).

7. See Bruneau et al eds., *supra* note 4 (describing the difficult transition that immigrants faced after arriving in Los Angeles).

8. *Id.*

9. *Id.*

10. *Id.*

11. See Farber, *supra* note 2 (noting the Obama administration referred to MS-13 as an “international criminal organization,” and urged travelers to avoid El Salvador given its increasing homicide rate).

12. See *id.* (describing the muddled position that the United States has maintained by continuing to deport individuals to El Salvador, despite deeming the country “too dangerous”).

13. Cf. Bruneau et al. eds., *supra* note 4 (asserting drug trafficking maintains the power and control that gangs hold).

To spread terror, gangs commit senseless acts of violence such as extortions, drug trafficking, and kidnapping.¹⁴ The United States' failure to take responsibility for the actions that contributed to the displacement of thousands of people from Central America will continue to destroy the lives of the vulnerable, particularly the lives of displaced immigrant children.¹⁵ As many of the children attempt to escape violence and gang recruitment, they make their way to the nearest safe haven—the United States.¹⁶ However, the current political climate makes it increasingly more difficult for children to escape the violence that torments them.¹⁷ There is a universal standard in human rights law, known as “the best interest of the child” standard, where society must do everything to protect children without discrimination.¹⁸

To turn our backs on immigrant children plagued by violence from countries from the neighboring northern triangle is a flagrant violation of human rights.¹⁹ The most affected are children who are migrating unaccompanied without any protection.²⁰ These children fall in the crossfire of American political rhetoric.²¹ The unaccompanied children are migrating from the northern triangle countries, and the

14. See Farber, *supra* note 2 (listing the most common crimes conducted by gangs in El Salvador).

15. Cf. *id.* (maintaining the United States has contributed to the increase in gang violence and displacement of individuals in El Salvador).

16. See Bruneau et al. eds., *supra* note 4 at 24–25 (describing the increase in gang violence that ultimately drove a mass migration of undocumented immigrants to the United States).

17. See JACQUELINE BHABHA, CHILD MIGRATION & HUMAN RIGHTS IN A GLOBAL AGE 234 (Princeton Univ. Press 2014) (noting children are at a particular risk for being recruited by gangs, gangs engage in extreme brutality and persecution against those who leave or reject their membership, and minimal success that individuals have in their asylum application).

18. G.A. Res. 44/25, Convention on the Rights of the Child, at 9 (Nov. 20, 1989)

19. See G.A. Res. 36/5, at 4 (Sept. 28, 2017) (discussing the responsibilities of individuals to protect all human rights).

20. See *id.* at 2 (urging the best interest of the child standard to be given deference at all times).

21. See UN Experts to US: “Release Migrant Children from Detention and Stop Using Them to Deter Irregular Migration,” U.N. OFF. HIGH COMM’R FOR HUM. RTS. [OHCHR] (June 22, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E> [<https://perma.cc/9BP5-FVPJ>] (condemning detention of children as punitive and criticizing the United States for using children as a deterrent for irregular immigration).

epicenter for MS-13 is El Salvador.²² Honduras,²³ Guatemala,²⁴ and Mexico²⁵ also experience similar levels of gang violence.²⁶ Children affected by gang violence experience psychological trauma regardless of their country of origin.²⁷ Immigrant children flee violence to seek refuge in a country that is both able and capable of helping vulnerable children.²⁸ Further, these children are not a threat to American society; to the contrary, when they receive assistance, they begin to thrive.²⁹ Providing aid to child victims of crime is vital to their development.³⁰ Children flourish when they are able to assimilate in their new environment and become contributing members of society.³¹

22. See *Calculan Medio Millón de Personas Involucradas en Pandillas en El Salvador*, LA PRENSA GRÁFICA (Jul. 31, 2015), <https://www.laprensagrafica.com/elsalvador/Calculan-medio-millon-de-personas-involucradas-en-pandillas-en-El-Salvador-20150731-0024.html> [<https://perma.cc/63T5-53R2>] (estimating 500,000 to 600,000 Salvadorans are members of gangs).

23. See U.N. OFF. ON DRUGS AND CRIME [UNODC], TRANSNATIONAL ORGANIZED CRIME, IN CENTRAL AMERICA AND THE CARIBBEAN: A THREAT ASSESSMENT 28 (Sept. 2012), https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf [<https://perma.cc/H3YB-4XXV>] (reporting approximately 5,000 gang members and areas of influence to be in Tegucigalpa and San Pedro Sula).

24. See *id.* at 28 (reporting there are around 14,000 to 17,000 gang members and the areas of influence include Guatemala City, San Marcos, Xela, and Antigua).

25. See *id.* at 24 (describing the gang violence that enters and exits out of Mexico).

26. See *id.* at 28–29 (indicating gang membership is concentrated in the northern triangle; however, El Salvador has the highest concentration of gang membership at 323 per 100,000 people—double the number of those of in Guatemala and Honduras).

27. See *cf.* Usama El-Awad et. al., *Promoting Mental Health in Unaccompanied Refugee Minors: Recommendations for Primary Support Programs*, 7 BRAIN SCI. 146 (2017) (proposing mental health solutions for refugees of all origins).

28. See U.N. OFFICE ON DRUGS AND CRIME [UNODC], *supra* note 23 at 44 (proposing the international community should provide Central American countries with support in dealing with gangs given that the flow originates and terminates outside the region).

29. See Walter Ewing, *Investing in the Children of Immigrants is Critical for American Economy*, AM. IMMIGR. COUNCIL (Sept. 26, 2016), <http://immigrationimpact.com/2016/09/26/children-of-immigrants-economic-benefits/> [<https://perma.cc/A48S-MZLU>] (declaring second-generation immigrants earn higher incomes than the native-born population because they tend to be bilingual, bicultural, and are high achievers in school).

30. See *cf.* SUSAN P. ROBBINS, FORENSIC SOCIAL WORK: PSYCHOSOCIAL AND LEGAL ISSUES ACROSS DIVERSE POPULATIONS AND SETTINGS 333 (Tina Maschi & George S. Leibowitz eds., Springer Publishing Company 2nd ed. 2018) (reporting interviews are guided by research from the past thirty years on proper interviewing techniques and a child's development capabilities).

31. See Ewing, *supra* note 29 (arguing immigrants contribute to the U.S. economy through their labor power, purchasing power, tax payments, business formation, and scientific innovation).

I. HISTORICAL BACKGROUND

A. *The Influx of Unaccompanied Minors is Due to Violent Crime in the Northern Triangle*

Central America is known as one of the most dangerous regions in the world.³² People live in fear of the criminal syndicates.³³ Thousands of immigrants entering the United States are from Honduras, Guatemala, and El Salvador.³⁴ These three countries rank among the most violent countries in the world.³⁵ In 2016, 540 Salvadoran minors were murdered as a direct result of gang violence.³⁶ Families in impoverished cities in Latin American countries have no choice but to flee in an attempt to protect their children from becoming victims of violent gang activities such as recruitment, sexual harassment, and rape.³⁷ Gang victims experience extreme brutality and prosecution when they reject membership.³⁸ As a result, children from the northern triangle leave their country of origin unaccompanied and motivated

32. See CHRISTOPHER GREELEY, ET. AL., POLICIES, PRACTICES AND STRUCTURES IMPACTING THE HEALTH AND CARE ACCESS OF MIGRANT CHILDREN 10 (2016) (stating pervasive violence is the major cause of emigration in the Northern Triangle countries); see also Farber, *supra* note 2 (explaining El Salvador obtained the title of most dangerous country in the world outside a war zone in 2015 given its homicide rate of one murder per hour).

33. See Greeley, et. al., *supra* note 32 at 11 (“... people living in poor communities and marginalized neighborhoods may face death threats if they witness a crime, refuse to join a gang or try to leave a gang. Women and children in these communities are subject to different forms of violence by local gangs including abuse, extortion, rape and murder.”).

34. See Rocio Cara Labrado & Danielle Renwick, *Central America's Violent Northern Triangle*, COUNCIL ON FOREIGN REL. (June 26, 2018), <https://www.cfr.org/background/central-americas-violent-northern-triangle> [<https://perma.cc/D3AF-PDYV>] (describing why individuals from the Northern Triangle are seeking asylum in the United States).

35. Labrado & Renwick, *supra* note 34.

36. See Tristan Clavel, *540 Children Were Murdered Last Year in El Salvador: Report*, INSIGHT CRIME (Jan. 31, 2017) <https://www.insightcrime.org/news/brief/540-children-murdered-last-year-el-salvador-report/> [<https://perma.cc/YU3R-2PNG>] (describing the impact of gang violence in El Salvador).

37. See cf. Nina Lakhani, *It's a Crime to Be Young and Pretty: Girls Flee Predatory Central American Gang*, THE GUARDIAN (Nov. 26, 2016), <https://www.theguardian.com/global-development/2016/nov/23/central-america-gangs-migrants-sexual-exploitation-prostitution> [<https://perma.cc/YX9A-R6FB>] (demonstrating the violence happening in El Salvador to be against its own citizens).

38. See Lakhani, *supra* note 37 (detailing Ms. Rincon's story of refusal to be the girlfriend to a gang member in Mexico).

entirely by fear.³⁹ These children escape violence or other conflict and turn to surrounding countries for safety.⁴⁰ The parents of these children are usually faced with two alternatives: hand their child off to a smuggler where their child may die or do nothing and watch their child die.⁴¹

Gangs are entities of organized crime and a substantial amount of their income comes from extortion.⁴² These gangs demand every business and individual to pay a fee, collected by young children, in order to have the privilege of not dying.⁴³ Furthermore, young women are highly attractive to gangs for sexual exploitation.⁴⁴ Gangs commit all types of criminal activities, including profiting on the backs of slaves through human trafficking.⁴⁵ They prey on the vulnerable, unprotected members of society.⁴⁶ Thus, gangs see children as cheap, expendable, “low-cost, low-risk” for sex, or labor.⁴⁷ The threat of sexual violence against young women has become a serious component for why this group flees to the Southwest border of the United States.⁴⁸ In the 2017 fiscal year, thirty-two percent of unaccompanied minors under the custody of the Office of Refugee Resettlement were seventeen year-old females.⁴⁹ In a similar

39. See Labrado & Renwick, *supra* note 34 (describing the violence in the Northern Triangle).

40. See UNHCR, *Children on the Run* (2014), <https://www.unhcr.org/56fc266f4.html> [<https://perma.cc/ZU2W-AZKM>] (describing why children leave their homes).

41. See Stephanie Nolen, *Menaced by Gangs, El Salvador's Children are Running for Their Lives*, THE GLOBE AND MAIL (Nov. 12, 2017), <https://www.theglobeandmail.com/news/world/menaced-by-gangs-el-salvadors-children-are-running-for-their-lives/article26151568/> [<https://perma.cc/JN9Q-D5QZ>] (reasoning by Salvadoran mother, “If I send [my son], he may die... But, if I keep him here, he *will* die... I can’t send him to go join a gang—they’ll just kill him. The gang is three choices—hospital, death or jail.”).

42. See Nolen, *supra* note 41 (describing the influence gangs have over El Salvador).

43. *Id.*

44. See Lakhani, *supra* note 37 (describing the modern slavery gang members force women and girls into).

45. See WALK FREE FOUND., GLOBAL SLAVERY INDEX 2016 92 (2016), <https://downloads.globalslaveryindex.org/ephemeral/GSI-2016-Full-Report-1562624818.pdf> [<https://perma.cc/ELU5-WMDR>] (outlining the role gangs play in modern day slavery).

46. See *id.* at 18 (outlining the role gangs play in modern day slavery).

47. David Gagne, *Organized Crime Profits from Modern Slavery in Latin America*, INSIGHT CRIME (June 3, 2016), <https://www.insightcrime.org/news/analysis/how-organized-crime-profits-off-modern-slavery-in-latin-america/> [<https://perma.cc/SC4Q-V5EN>].

48. Nina Lakhani, *supra* note 37.

49. OFF. OF REFUGEE RESETTLEMENT, U.S. DEP’T OF HEALTH & HUM. SERV., FACTS AND DATA (May 18, 2019), <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#age> [<https://perma.cc/PG3Z-JMF9>].

vein, young boys under the age of thirteen are highly coveted by gangs because they are too young to face legal charges and are presumed incapable of infringing the law in these countries.⁵⁰ Gangs use boys as errand runners.⁵¹

The valiant child who has managed to escape the violence in his or her country of origin has been face-to-face with death and other dangers.⁵² Death is highly likely in such a perilous journey.⁵³ Death by drowning in a river crossing or by dehydration are the most common.⁵⁴ Those that do not die face other dangers such as kidnapping for ransom.⁵⁵ The drug cartels enslave children traveling alone and use them to pack cocaine for drug traffickers.⁵⁶ Additionally, children who are caught by Mexican officials risk being sexually or physically abused by corrupt authorities.⁵⁷

Therefore, it is clear that the children that set foot on American soil have crossed through one of the most violent areas outside of a warzone.⁵⁸ These children are presented with mental health issues.⁵⁹ They have experienced a substantial amount of abuse in their country of origin, as well as abuse along their journey to the American border.⁶⁰ Once these children reach the border, they are apprehended by border patrol agents and detained until a determination of whether they are able

50. See Juan J. Fogelbach, Comment, Gangs, Violence, and Victims in El Salvador, Guatemala, and Honduras, 12 SAN DIEGO INT&L L.J. 417, 431–33 (2011) (stating political parties in El Salvador have proposed an amendment to Article 30 of the Penal Code making the use of minors an aggravating circumstance to a crime, and punishing the recruitment of children by ten to fifteen years in prison).

51. See Nolen, *supra* note 41.

52. See *id.* (discussing the public-relations campaigns which detail the dangers on this trip).

53. See *id.* (discussing an example of the deadly dangers in traveling).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. See Farber, *supra* note 2 (describing the number of homicides and the correlation to the deaths in a war zone).

59. See LAURA PACIONE ET AL., THE MENTAL HEALTH OF CHILDREN FACING COLLECTIVE ADVERSITY POVERTY, HOMELESSNESS, WAR AND DISPLACEMENT, IACAPAP TEXTBOOK OF CHILD & ADOLESCENT MENTAL HEALTH J.4, 10 (Joseph M. Rey et al. eds. 2015) (reporting children have high rates of mental health problems such as depression and post-traumatic stress, which persists after resettlement in the new country).

60. See, e.g., Nolen, *supra* note 41 (describing the deaths that occur due to gangs and abuse by Mexican officials as well as the dangerous journey to get to America).

to seek refuge in America through asylum or some other form of relief.⁶¹ Most of these children fall within the meaning of 6 U.S.C. §279(g)(2), which defines an “unaccompanied alien child” as one who has no lawful status in the United States and is under the age of 18 with no parent or legal guardian available in the United States, or their parent or legal guardian is not available to provide care and physical custody.⁶²

Some children develop a mental disorder at the hands of the U.S. government.⁶³ The U.S. policy of detaining unaccompanied minors contributes to the exploitation, abuse, and irreparable psychological damage.⁶⁴ When confined, children experience psychological changes as a result of anxiety and depression, directly related to detention.⁶⁵ The longer the confinement, the longer the impact on the child.⁶⁶ The importance of promptly placing children in a least restrictive setting is vital to minimizing the pernicious impact on a child’s mental health.⁶⁷ Children are being held in prison-like conditions with less than desirable living quarters.⁶⁸

61. See, e.g., ADMIN. FOR CHILD. & FAM., U.S. DEP’T OF HEALTH AND HUMAN SERV., COMMUNITY SAFETY INITIATIVE FOR THE UNACCOMPANIED ALIEN CHILDREN PROGRAM (Aug. 16, 2017), <https://assets.documentcloud.org/documents/4380794/Community-Safety-Initiative-for-the.pdf> [<https://perma.cc/ELJ2-EL4Q>] (detailing the procedure when the Office of Refugee Resettlement (ORR) receives custody of unaccompanied children 72 hours after being referred by the Department of Homeland Security).

62. 6 U.S.C. §279(g)(2) (2019).

63. See Benedict Carey, *A Troubling Prognosis for Migrant Children in Detention: ‘The Earlier They’re Out the Better’*, N.Y. TIMES (June 18, 2018), <https://www.nytimes.com/2018/06/18/health/migrant-children-mental-health.html> [<https://perma.cc/Z62W-2RZP>] (discussing the effects on children when incarcerated in detention centers).

64. See Michael Grabell & Topher Sanders, *Immigrant Youth Shelters: “If You’re a Predator, It’s a Gold Mine”*, PROPUBLICA (July 27, 2018, 12:29 PM), <https://www.propublica.org/article/immigrant-youth-shelters-sexual-abuse-fights-missing-children> [<https://perma.cc/3N3P-XGYQ>] (describing the lack of oversight and hiring in the detention centers allows for predatory behavior).

65. See Complaint for Injunctive Relief, Declaratory Relief and Nominal Damages at ¶ 15, Lucas R., v. Azar, No. CV 18-5741-DMG (PLAx) (C.D. Cal. Dec. 12, 2018) (No. 2:18-cv-05741) 2018 WL 7200716 [hereinafter *Complaint*] (pointing ORR’s restrictive settings such as juvenile halls or involuntary medication causes children and youth great trauma, requiring the Children Center to devote greater resources to mental health).

66. L.V.M. v. Lloyd, 318 F. Supp. 3d 601, 618 (S.D.N.Y. 2018).

67. *Id.*

68. See Carey, *supra* note 63 (discussing the psychological harm including developing depression and anxiety as a result of being held in detention); see also Ella Nilsen, *How the Trump Administration is Using Undocumented Kids’ Confidential Health Information to Lock them Up*, VOX MEDIA (June 19, 2018), <https://www.vox.com/policy-and-politics/2018/6/18/17449150/>

The governmental agencies with authority over unaccompanied minors are committing an extensive list of human rights violations.⁶⁹ Perhaps this is attributed to the lack of governmental oversight in these facilities.⁷⁰ The surge of unaccompanied children at the border brings many human rights concerns to the forefront of immigration discussions.⁷¹ Children under the custody of the Customs Border Patrol (CBP) have reported physical and psychological abuse, unsanitary and inhumane living conditions, isolation, extended periods of detention, as well as denial of access to legal and medical services.⁷² Once an unaccompanied immigrant child is apprehended by CBP, they are held for seventy-two hours, or up to five days before being sent to a long-term facility as they await an immigration hearing or become unified with their families.⁷³

Unaccompanied minors are seen as a high-risk subset of orphaned children: they report higher rates of exposure to traumatic experiences, including physical and sexual violence.⁷⁴ Therefore, it is particularly important for those who have experienced organized violence in their home country of origin to receive adequate mental health services.⁷⁵ There is a high rate of mental health problems, including depression and post-traumatic stress disorder.⁷⁶ These issues continue after resettlement in a new country.⁷⁷ Migrant children need to receive adequate care

family-separation-policy-immigration-dhs-orr-health-records-undocumented-kids [https://perma.cc/W5FX-XWRP].

69. THE U. OF CHICAGO L. SCH. INT'L HUM. RTS. CLINIC ET AL., *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection* 1 (May 2018), [https://www.dropbox.com/s/lplnnufjwci0xn/CBP%20Report%20ACLU_IHRC%205.23%20FIN](https://www.dropbox.com/s/lplnnufjwci0xn/CBP%20Report%20ACLU_IHRC%205.23%20FINAL.pdf?dl=0) AL.pdf?dl=0 [https://perma.cc/VZM4-YE49].

70. See Grabell & Sanders, *supra* note 64 (describing a plan that was not implemented and has continued the lack of governmental oversight).

71. See UNHCR, *supra* note 40 (detailing the way in which the increase in immigration has led to increased discussion about protecting unaccompanied children).

72. THE U. OF CHICAGO L. SCH. INT'L HUM. RTS. CLINIC ET AL., *supra* note 69.

73. 8 U.S.C. § 1232(b)(3) (2019); 8 U.S.C. § 1232(c)(2)(A) (2019).

74. LAURA PACIONE ET AL., *supra* note 59.

75. See PACIONE ET AL., *supra* note 59 at 24 (proposing clinicians keep in mind families seeking asylum are going through a period of adaptation. The family's strength needs to be taken into account, their readiness and abilities to cope with difficulties, and their understandings of the causes of their difficulties and their feelings about solutions proposed to address them).

76. *Id.*

77. *Id.*

to battle these various mental health issues.⁷⁸ Such care will influence the child's psychological well-being as they learn coping mechanisms.⁷⁹ Children who build rapport with their care-provider have a smooth transition, facilitating more cooperation with the immigration process.⁸⁰ Further, comparing children in orphanages to unaccompanied minors, children in orphanages lag behind and are not at the same cognitive level as their non-orphaned peers, but once adopted, they begin to flourish and develop at accelerated rates—ultimately catching up to their peers.⁸¹

*B. The Flores Settlement Established the “Bare Minimum”
in the Confinement and Treatment of Unaccompanied Minors*

The seminal case, *Reno v. Flores*,⁸² also known as the “*Flores Settlement Agreement*,” (FSA) has governed the treatment of migrant children since 1997.⁸³ The FSA requires that children under immigration custody be treated with dignity, respect, and special concern for their vulnerability as children.⁸⁴ The FSA declared that facilities housing migrant children provide a list of services—including physical care and maintenance; individual and group counseling; education; recreation and leisure-time activities; family reunification services and access to religious services, visitors, and legal assistance.⁸⁵ The FSA established that minors are not to be placed in a secured facility if there are less

78. See *id.* at 28–29 (proposing the treatment of refugee children with a combination of cultural knowledge and trauma therapy methods that encompass individually focused psychotherapies, traditional therapeutic approaches and systematic interventions addressing the consequences of organized crime on the family's social relationships).

79. *Id.* at 24.

80. See generally ROBBINS, *supra* note 30 (discussing how developing a rapport with children helps provide narrative answers which assists with determining developmental level and teaching children how to respond appropriately).

81. See generally PACIONE ET AL., *supra* note 59 at 9 (understanding that the lack of education and psychological distress experienced by immigrants affects cognitive abilities such as seen in orphaned children).

82. 507 U.S. 292 (1993).

83. See *Reno v. Flores*, 507 U.S. 292 (1993) (regulating the treatment of migrant children).

84. See *id.* at 299 (regulating the treatment of migrant children); see also THE U. OF CHICAGO L. SCH. INT'L HUM. RTS. CLINIC ET AL., *supra* note 69 (describing the abuse that children face when detained).

85. See *Reno*, 507 U.S. at 298 (specifying services that migrant children should receive).

restrictive alternatives available.⁸⁶ Under the FSA, minors are entitled to receive one counseling session per week by a trained social worker.⁸⁷ The sole purpose of the session is to review the minor's progress, establish new short term objectives, and address both the developmental and crisis-related needs of each minor.⁸⁸ In addition, the FSA states that group counseling sessions must be held at least twice a week.⁸⁹ The group counseling sessions provide the children with an opportunity to become acquainted with the staff and other children.⁹⁰ During the session, children have the freedom to discuss any problems they are facing and have the opportunity to resolve those problems.⁹¹ The FSA further establishes a reasonable right to privacy.⁹²

The Unaccompanied Alien Children Program was transferred to the Office of Refugee Resettlement (ORR) following the 1997 FSA under the Homeland Security Act of 2002.⁹³ Since then, migrant children are under the responsibility and care of ORR.⁹⁴ As indicated in the FSA, mental health services must be provided to migrant children in custody.⁹⁵ When possible, ORR determines the initial placement designation of the unaccompanied minor within twenty four hours of the initial referral.⁹⁶ ORR's assessment is contingent upon the minor's history and condition, including: criminal history, to include involvement in human trafficking or smuggling; prior acts of violence or threats in government custody;

86. See Stipulated Settlement Agreement at 12–14, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (providing the stipulations of the Flores Settlement Agreement).

87. See Stipulated Settlement Agreement at Ex.1 p.2, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (outlining the minimum standards for licensed programs).

88. See *id.* at Ex.1 p.1 (stating the standard for licensed programs).

89. See *id.* at Ex.1 p.2 (detailing the requirements for counseling sessions for licensed programs).

90. See *id.* (examining the advantages of group counseling).

91. See *id.* at Ex.1 p.2–3 (highlighting the open environment in counseling sessions).

92. See *id.* at Ex.1 p.3 (signifying the existence of privacy rights within other requirements).

93. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2202.

94. *Id.*

95. See Stipulated Settlement Agreement at Ex. 1 p.1, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (providing mental health services to another one of the requirements).

96. See OFF. OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUM. SERV., CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED: SECTION 1, (Jan. 30, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1> [<https://perma.cc/VRU5-Z3PY>] (outlining ORR's policies when accompanied children are entering the United States).

gang/cartel involvement; prior escape(s) or attempted escapes from government custody; mental health concerns; and sexual predatory behavior.⁹⁷ Upon the minor's responses and ORR's evaluation, the minor's level of care is determined.⁹⁸ According to ORR policy, at least every thirty days the record of the child is reassessed in order to determine whether a new level of care is needed.⁹⁹ ORR may refer a child to a transfer known as either a "step-up" or a "step-down."¹⁰⁰ A step-up is determined for the more restrictive level of care while step-downs are determined upon ORR's discretion.¹⁰¹ For step-downs, ORR considers the minor's behavior and the immigration judge's decision in a bond hearing pertaining to the minor's level of danger.¹⁰² Lastly, the Trump Administration's Zero Tolerance Policy fundamentally disrupted the Department of Homeland Security's (DHS) approach to immigration enforcement.¹⁰³ As of May 2018, DHS determined that Trump's policy would include immigrant adults with minor children arriving without authorization to the United States.¹⁰⁴ Because minor children cannot be held in criminal custody with an adult, the adults who entered the United States without authorization were separated from their minor children upon the adult's placement for criminal prosecution.¹⁰⁵ Those children were then labeled as "unaccompanied alien children" and were held under DHS custody until transferred to ORR custody.¹⁰⁶ ORR knew the unaccompanied minor's parents' location, thus complying with HIPAA regulations and obtaining consent from the parent.¹⁰⁷ However, the

97. *Id.*

98. *See id.* (setting out guidelines for how a minor's level of care is established).

99. *Id.*

100. *See id.* (distinguishing the criteria for step-up and step-down).

101. *Id.*

102. *See id.* (providing the factors that ORR considers when deciding whether to transfer step-up or step-down).

103. *See* OFF. OF INSPECTOR GEN., U.S. DEP'T. OF HOMELAND SECURITY, SPECIAL REVIEW – INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY, (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> [<https://perma.cc/L5G5-JBD7>] (outlining the effects of the Trump Administration's Zero Tolerance policy).

104. *Id.*

105. *See id.* (highlighting the procedures and effects of Trump's zero tolerance policy).

106. *See id.* (establishing the internal procedures within Trump's zero tolerance policy).

107. *Contra id.* (revealing the lack of integration between CPB's, ICE's and HHS' respective information technology systems hinder ORR's tracking of the parent's location when separated from their child).

initial DHS data set is misleading.¹⁰⁸ Upon the Office of Inspector General's request to obtain the information, the data DHS provided did not match how the minors initially entered the country—with their parents.¹⁰⁹ DHS's data showed that the minors entered the United States unaccompanied, when in fact they had entered with their parents, while CBP's and ICE's systems continued to identify the minors as "having been separated from an adult."¹¹⁰

C. Unaccompanied Children's Mental Health Information is Disseminated without Their Consent

A growing number of allegations from numerous immigration attorneys who represented undocumented children have stated that the child's psychological records during their time in detention are used against the children in immigration court.¹¹¹ DHS heavily relies on private information provided by psychologists and social workers in order to make their decisions.¹¹² While the services provided to immigrant children in detention centers include counseling, it is not kept confidential and every private dialogue between child and counselor can be exposed in immigration court.¹¹³ The child's case files are used by the Trump administration as an argument to place migrant children in higher levels of detention, similar to "jail-like" settings.¹¹⁴ The child's case files usually contain their mental health record, including the diagnosis and treatment of psychiatric conditions.¹¹⁵ Occasionally children are deported back to their home country of origin based on the information of the confidential health records.¹¹⁶ While the practice of agencies sharing confidential information is nothing new, the Trump

108. *See id.* (highlighting inconsistencies in DHS' records of children).

109. *See id.* (reporting incomplete and inconsistent reports by DHS of the children in their custody).

110. *See id.* (signifying the inconsistencies between different data banks).

111. *See Nilsen, supra* note 68 (providing samples of when confidential medical and psychological records have appeared in immigration court as evidence).

112. *See id.* (emphasizing the role of psychologists and social workers within the immigration court system).

113. *See id.* (explaining the lack of confidentiality within the detention centers).

114. *See id.* (mapping out the manner in which the children's case files are used).

115. *See id.* (listing the contents of a child's case file).

116. *See id.* (describing how the child's confidential records can sometime be used against their benefit).

administration has been more aggressive in effectively using the children's own medical records against them.¹¹⁷ Ultimately, this practice is a violation of a child's right to privacy.¹¹⁸ According to ORR's policy on maintaining confidentiality of mental health records, it is the care providers responsibility to procure and maintain the records of the health services provided.¹¹⁹ ORR's policy further states that health and case files must be maintained separately.¹²⁰ It is also ORR's policy that care providers use discretion and protect the confidentiality of medical information.¹²¹ These children may have histories of abuse or may be seeking safety from threats of violence.¹²² Health and Human Services (HHS) states it does not release information which would compromise the minor—however, the contrary has transpired.¹²³

A child's right to privacy is a basic human right.¹²⁴ The Health Insurance Portability and Accountability Act (HIPAA) protects the confidentiality of an individual's medical information.¹²⁵ Confidential information must be protected at all times and kept in a manner that does

117. *See id.* (emphasizing how the Trump Administration uses the child's confidential medical records to detain and deport the child).

118. *See id.* (describing the conflict between a child's right to privacy and the public dissemination of the child's confidential records).

119. *See* OFF. OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUM. SERV., CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED: SECTION 3, (Apr. 20, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3> [<https://perma.cc/KV8G-RYDB>] (outlining section three of ORR's policies when accompanied children are entering the United States).

120. *Id.*

121. *Id.*

122. *See* Lorna Collier, *Helping Immigrant Children Heal*, 46 AM. PSYCHOL. ASS'N no. 3, at 58, 60–61 (Mar. 2015) <https://www.apa.org/monitor/2015/03/immigrant-children.aspx> [<https://perma.cc/4ET7-CEKW>] (describing the gang violence and family abuse that undocumented children often experience).

123. OFF. OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUM. SERV., HEALTH AND SAFETY (May 3, 2019), <https://www.acf.hhs.gov/orr/about/ucs/health-and-safety> [<https://perma.cc/ED27-A297>]; *see* Nilsen, *supra* note 68 (revealing the truth about the use of children's medical records).

124. *See* G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) (providing details on the ratification of a resolution that focuses on a child's fundamental rights); *see also* Nilsen, *supra* note 68 (explaining how the Trump administration's use of medical records violates medical ethics and a child's right to privacy).

125. *See generally* Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, 1992 (1996) (providing regulations which are in place to enhance confidentiality in the medical field).

not violate the privacy of the individual.¹²⁶ HIPAA becomes complex with detained children, but that fact does not justify stripping away the rights and protections provided by the United States.¹²⁷ For example, in the correctional environment, the agency with authority over the child may release the child's confidential records.¹²⁸ Migrant children cannot legally exercise their HIPAA rights without the proper authorization, such as a signature from a parent or legal guardian when that parent or guardian is available.¹²⁹ Sometimes, the parent is also detained, which makes it difficult to obtain authorization.¹³⁰ Every effort must be made to obtain consent from a child's parent or guardian.¹³¹ While HIPAA is a federal law, it can be superseded by a more stringent state law.¹³² States have enacted privacy laws that are more stringent than HIPAA because they further protect mental health records.¹³³ Disclosure of psychotherapy notes is permissible only where certain federal exceptions apply.¹³⁴

For example, under HIPAA, a covered entity¹³⁵ may disclose protected health information (PHI) without the written consent of the

126. *See id.* ("includ[ing] procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.").

127. *See* Nilsen, *supra* note 68 (discussing the difficulties in maintaining the HIPAA requirements with undocumented children).

128. *See* 45 C.F.R. § 164.512 (2019) (containing exceptions where disclosure may occur without an individual's consent).

129. *See* 45 C.F.R. § 164.512 (2019) (providing instances where an individual's medical information can be release without authorization); *see also* Nilsen, *supra* note 68 (explaining the Trump Administration's use of children's medical records).

130. Nilsen, *supra* note 68.; *cf.* Julie Linton et al., *Detention of Immigrant Children*, 139 AM. ACAD. PEDIATRICS COUNCIL ON COMMUNITY PEDIATRICS, no. 4, at 1, 6 (2017) (detailing the effect of detention on the rights of the parents).

131. *See* Carri Becker Maas & John M. LeBlanc, *Mental Health and Minors: Proceed with Caution!*, MANATT, PHELPS & PHILLIPS LLP BLOG (Apr. 23, 2018), https://www.manatt.com/Insights/Newsletters/Health-Update/Connecting-Justice-Involved-Populations-to-Health?utm_source=healthupdatenewsletter&utm_medium=email&utm_campaign=healthupdate_4.23.18#Article5 [<https://perma.cc/8LGG-5H69>] (detailing who to obtain consent from when a minor is involved).

132. *See* 45 C.F.R. § 160.203(b) (2019) (explaining that a state law is "more stringent" and more protective of the patient, then that state law takes precedence over HIPAA).

133. Maas & LeBlanc, *supra* note 131.

134. *Id.*

135. *See* 45 C.F.R. § 160.103 (2019) ("a covered entity means (1) a health plan; (2) healthcare clearinghouse; (3) a healthcare provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.").

individual if that individual is a victim of abuse, neglect, or domestic violence.¹³⁶ The statute explicitly states that these types of disclosures are not intended to be used against the individual and that they require materiality.¹³⁷ However, HIPAA extends special protections to psychotherapy notes.¹³⁸ HIPAA defines psychotherapy notes as those “recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or group, joint or family counseling session and are separated from the individual’s medical record.”¹³⁹ Records containing psychotherapy notes, however, do not have a “right of access.”¹⁴⁰

In *Flores v. Sessions*,¹⁴¹ Plaintiffs alleged psychotropic drugs were administered to a minor child at a detention center without first obtaining authorization such as a court order to obtain the plaintiffs’ informed consent.¹⁴² The plaintiffs point out the migrant child’s mother received no call to obtain her consent to give her child mental health medication.¹⁴³ Additionally, the Memorandum In Support Of Motion to Enforce Class Action Settlement states:

ORR also regularly places youth on multiple psychotropic medications. It often tells children little or nothing about the drugs, nor does the agency obtain parental consent, or the legal equivalent thereof, to medicate children. There can be no question that psychotropic drugs can seriously and permanently injure children, yet ORR routinely administers such drugs

136. 45 C.F.R. § 164.512 (2019).

137. 45 C.F.R. § 164.512(i)(1)(iii)(B) (2019).

138. 45 C.F.R. § 164.524(a)(1)(i) (2019); see OFF. FOR CIV. RTS., U.S. DEP’T OF HEALTH & HUM. SERV., HIPAA PRIVACY RULE AND SHARING INFORMATION RELATED TO MENTAL HEALTH, <https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf> [<https://perma.cc/9YTL-KRYQ>] (describing the extensive protections for mental health information).

139. 45 C.F.R. § 164.501 (2019).

140. See 45 C.F.R. § 164.524(a)(1)(i) (2019) (stating the instances where an individual has a “right of access” to inspect and obtain a copy of protected health information about an individual).

141. No. CV 85-4544-DMG (AGRx) at 22 (July 30, 2018).

142. *Id.*

143. *Id.*

to youth in utter disregard of state laws designed to support children's mental health.¹⁴⁴

According to the Texas Regulations, a General Residential Operations must acquire "written, signed, and dated consent, specific to the psychotropic medication to be administered, from the person legally authorized to give medical consent before administering a new psychotropic medication to a child."¹⁴⁵ In *Flores*, the court held that the defendant shelter must: 1) disclose to a "person legally authorized to give medical consent," and 2) obtain the informed written consent of that person—in compliance with the Texas Administrative Code.¹⁴⁶ Defendants who do not obtain informed written consent do not have the authority to administer psychotropic drugs to the plaintiff unless they obtain a court order authorizing them under state law or in an emergency as defined in Section 266.009 of the Texas Family Code.¹⁴⁷ This section specifically states that "[c]onsent or court authorization for the medical care of a foster care child...is not required in an emergency during which it is immediately necessary to provide medical care to the foster child to prevent the imminent probability of death or substantial bodily harm to the child or others."¹⁴⁸

A growing number of mental health organizations and professionals have issued letters of protest against the detention of immigrant children.¹⁴⁹ These letters refer to the increased risk of anxiety and depression in the detained children.¹⁵⁰ Post-traumatic stress (PTSD) and attention-deficit hyperactivity disorder (ADHD) have also been named.¹⁵¹ These mental illnesses depend on many factors, including the age of the child at the time of separation from the parent and the length

144. Memorandum in Support of Motion to Enforce Class Action Settlement, *Flores v. Sessions*, No. CV 85-4544-DMG (AGRx) at 12 (May 18, 2018).

145. 26 TEX. ADMIN. CODE § 748.2001(b) (2019).

146. TEX. FAM. CODE § 266.004(a) (2015); No. CV 85-4544-DMG (AGRx) at 32 (July 30, 2018).

147. TEX. FAM. CODE § 266.004(g) (2015).

148. TEX. FAM. CODE § 266.009(a) (2005).

149. See Carey, *supra* note 63 (listing several reasons for these letters of protest).

150. *Id.*

151. *Id.*

of separation from the family.¹⁵² This new norm of detaining children is alarming psychologists.¹⁵³

Doctors have concluded the trauma experienced by immigrant children will be problematic in the future as they integrate into our society.¹⁵⁴ The separation of children from parents causes severe stress on young, developing minds, which significantly alters the brain and increases the risk of developing serious psychiatric and physical problems later in life.¹⁵⁵ In addition, migrant children's mental health will impact the world at large because these children are likely to struggle as they cope with their mental health and attempt to become productive members of society.¹⁵⁶ Various physicians and psychologists wrote in a letter to Attorney General Jeff Sessions:

The best interests of the child is the recognized legal standard for the treatment of children across a range of domains, including parental custody and immigration proceedings. It should not be U.S. policy to traumatize children . . . intentional infliction of pain on children and their families is not just inhumane, it also fails to meet the stated goals of deterrence . . . it will not change the realities that drove the parents to seek safe haven in the United States.¹⁵⁷

II. THE MENTAL HEALTH OF IMMIGRANT CHILDREN

A. *The Psychological Effect of Trauma and the Effects of Detention*

In order to understand how trauma affects children, it is important to understand some of the mental health conditions affecting immigrant children.¹⁵⁸ The most common include anxiety, depression, PTSD, and

152. *Id.*

153. *Id.*

154. Gabrielle Carlson, *Child Mental Health Expert Says Trauma in Detention Centers Will Have Larger Impact on the Future*, STONEY BROOK MED. NEWSL. (June 25, 2018, 2:05 PM), <https://www.newswise.com/articles/child-mental-health-expert-says-trauma-in-detention-centers-will-have-larger-impact-on-the-future> [<https://perma.cc/H3B7-NDAH>].

155. *See id.* (describing the impact that children will face in their future due to trauma endured in detention centers throughout their childhood).

156. *Id.*

157. Letter from Physicians for Human Rights, to Secretary Kirstjen Nielsen & Att'y Gen. Jeff Sessions, PHR (June 14, 2018), https://s3.amazonaws.com/PHR_other/Separation_Letter_FINAL.pdf [<https://perma.cc/N96G-5SN9>].

158. *See* Linton et al., *supra* note 130 (providing examples of the mental health conditions that arise due to the confinement of children).

other behavioral problems.¹⁵⁹ PTSD transpires when a child is exposed to a catastrophic event, such as natural disasters, violence, or severe accidents.¹⁶⁰ For a child to meet the elements of a mental disorder, the occurrence of the event must have caused the child to experience extreme fearfulness and helplessness.¹⁶¹ In addition to extreme fearfulness, there are other specific types of responses, including symptoms of re-experiencing, avoidance, and arousal, which manifest through sleep disturbance, increased irritability, expressions of anger or aggression.¹⁶² These are all common symptoms of PTSD.¹⁶³ Children are vulnerable and feel less secure, as they have little power and status in society.¹⁶⁴ They experience feelings of defenselessness following a traumatizing experience, causing a more arduous challenge for mental health counselors and therapists to overcome.¹⁶⁵

Unaccompanied minors are treated and classified as foster children, and both groups suffer similar traumatic experiences.¹⁶⁶ Foster children are often exposed to neglect and abuse before placement, which correlates to an increased rate of mental disorders compared to their non-abused counterparts.¹⁶⁷ However, over time, foster children can adapt to their new adoptive environment, and their cognitive development increases.¹⁶⁸ That indicates that it is likely that unaccompanied minors could have the same results as American foster children.

159. *Id.*

160. See Videotape: PTSD in Children: Move in the Rhythm of the Child with Frank Ochberg (Psychotherapy.net 2011) (on file at <https://stmarytx.kanopy.com/video/ptsd-children-move-rhythm->) [<https://perma.cc/Q22B-KL86>] (portraying the post-traumatic stress disorders that children suffer from detention).

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. See OFF. OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUM. SERV., UNACCOMPANIED ALIEN CHILDREN FREQUENTLY ASKED QUESTIONS (July 9, 2018), <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-frequently-asked-questions> [<https://perma.cc/D7BX-97LJ>] ("A small number of children in HHS custody are placed in a long-term foster care instead of being released to a sponsor.").

167. See Jill M. Waterman et al., *Pre-Placement Risk and Longitudinal Cognitive Development for Children Adopted from Foster Care*, 92 CHILD WELFARE, no. 4 at 1, 7–8 (2013) (detailing statistics as to the effects of abuse in foster care on the children's cognitive development).

168. *Id.* at 7, 10.

B. Health Information Privacy in the Confinement Setting

Regardless of their status, children should be protected in every environment because of their vulnerability.¹⁶⁹ Mental health counselors and therapists must build rapport with their child clients.¹⁷⁰ It is of utmost importance that therapists do not violate their client's trust, as lack of confidentiality would interfere with the child's recovery.¹⁷¹ In a setting such as a detention center, therapists do not relinquish their code of ethics; thus, a child's records must be kept according to the ethical standards of the profession as well as comply with state law.¹⁷² Therefore, a therapist is obligated to keep confidential all conversations, diagnoses, treatment, and any material revealed during treatment.¹⁷³ Failure to keep this private information confidential is a violation of the therapist's code of ethics and the child's right to privacy.¹⁷⁴

In comparing unaccompanied minors to foster children, foster children in America are not treated any better just by being "American" or "American born."¹⁷⁵ For example, around 2000, poor treatment of black foster youth caused bipolar disorder diagnoses to skyrocket in that demographic.¹⁷⁶ Similarly, unaccompanied minors also have a high number of diagnoses of mental health disorders.¹⁷⁷ To cover up the

169. See G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) (emphasizing children are "entitled to special care and assistance.").

170. ROBBINS, *supra* note 30.

171. THE MENTAL HEALTH PRACTITIONER AND THE LAW: A COMPREHENSIVE HANDBOOK 75–76 (Robert I. Simon & Lawrence E. Lipson eds., Harvard University Press 1998).

172. *Id.* at 74.

173. See *id.* at 75 (discussing that the "material" includes "written or oral, and in the case of children, can include actions and occurrences such as observations of the child's play and drawings.").

174. *Id.*

175. See ROBERT WHITAKER, ANATOMY OF AN EPIDEMIC: MAGIC BULLETS, PSYCHIATRIC DRUGS, AND THE ASTONISHING RISE OF MENTAL ILLNESS IN AMERICA 253–55 (Crown Publisher, 2010) (discussing how our very own American society treats children in the foster care system by keeping them sedated on psychotropic medication).

176. See WHITAKER, *supra* note 175 ("based on hospital discharges, they are now said to suffer from bipolar disorder at a greater rate than whites.").

177. Caroline Chen & Jess Ramirez, *Legal Filings Reveal that Immigrant Shelters are Overmedicating Unaccompanied Minors*, PAC. STANDARD (July 27, 2018), <https://psmag.com/social-justice/immigration-shelters-are-drugging-teens-without-their-consent> [<https://perma.cc/GY4K-WLC6>]; see Kenneth E. Miller, *A Perilous Journey: The Plight of Unaccompanied Minors*, PSYCHOL. TODAY (Oct. 31, 2017), <https://www.psychologytoday.com>.

problem, agencies would rather medicate children, rather than solve it by providing coping mechanisms.¹⁷⁸ Further, failing to address this issue head-on leads the American economy to suffer because so many of these children will rely on welfare or other aid for the rest of their lives.¹⁷⁹

For example, a teenage minor under ORR custody reported that he was assigned a therapist who told him that she would help him.¹⁸⁰ However, every time he would share his exposure to deadly violence, he was labeled a “gang member” by the therapist.¹⁸¹ Further, the confidential information he shared with the therapist, including the dangers he faced in Guatemala and the fear he experienced, was used against him.¹⁸² In a class-action suit filed on behalf of unaccompanied minors, the complainant alleged children under ORR custody were placed in residential shelters with the knowledge they would be medicated with powerful psychotropic medications.¹⁸³

The minor reported that he was forced to take psychotropic medications against his will.¹⁸⁴ He also witnessed fellow residents forced to take medication, injected with drugs, and “tied up in restraint chairs for hours with crows over their heads.”¹⁸⁵ Unaccompanied minors

com/us/blog/the-refugee-experience/201710/perilous-journey-the-plight-unaccompanied-minors [https://perma.cc/WT9-7KLZ] (“[o]ne of the more robust findings concerns the toxic impact on children’s mental health of prolonged detention in holding centers for asylum seekers. Rates of depression and suicidal behavior tend to increase in these settings of prolonged confinement and uncertainty.”).

178. *Flores v. Sessions*, No. CV 85-4544-DMG (AGRx) at 7 (July 30, 2018); see Chen & Ramirez, *supra* note 177 (discussing an unaccompanied minor’s case whose grandfather is in California, and mother in El Salvador, reporting various prescribed psychotropic drugs whose labels warn of suicidal behavior. At no time did shelter staff obtain consent from the minor’s sponsor or mother).

179. See WHITAKER, *supra* note 175 at 255 (Crown Publisher, 2010) (discussing that so many who have a mental disorder will end up on welfare, receiving Social Security Income).

180. Bob Ortega et al., *For One Teen Asylum Seeker, Confessing Fears Led to Months in Detention*, CNN (June 29, 2018), <https://www.cnn.com/2018/06/29/us/teenage-asylum-seeker-migrant-describes-months-in-detention-invs/index.html> [https://perma.cc/M4HG-7W79].

181. *Id.*

182. See *id.* (stating that “because this child shared confidential information, when the therapist disguised herself as someone he could trust, he was placed in a high-security facility, and “ultimately to lock him up with dangerous offenders in a juvenile prison despite his record of good behavior.”).

183. *Complaint*, *supra* note 65 at ¶ 13.

184. *Id.* at ¶ 26.

185. Ortega et al., *supra* note 180; William Cummings, *Migrant Children Describe Abuse, Being Forcibly Medicated at Youth Shelters: Lawsuit*, USA TODAY (June 21, 2018),

reported they were given “up to eighteen pills a day...without being informed what the pills were for.”¹⁸⁶ These drugs included “antidepressants, anti-anxiety, antipsychotic medications such as Clonazepam, Divalproex, Duloxetine, Lithium and Geodon.”¹⁸⁷

III. CURRENT PROTECTIONS

A. Asylum

The aid, once available to these children, is slowly diminishing.¹⁸⁸ It has become more difficult for the persecuted to seek refuge in the United States.¹⁸⁹ The classic refugee flees their country of origin because the government has persecuted them, either directly through its own actions or indirectly by being unwilling or unable to prevent the misconduct of non-government actors.¹⁹⁰ However, it is important to note the difference between an asylum seeker and a refugee, as they are often used interchangeably.¹⁹¹ An individual may suffer threats and violence in their country of origin for reasons relating to their social, economic, family, or other personal circumstances.¹⁹² However, asylum is only available for certain classes of people.¹⁹³ If the persecution arises due to membership in a protected group, the victim may not have a choice but

<https://www.usatoday.com/story/news/politics/2018/06/21/lawsuit-alleges-abuse-migrant-children/723476002/> [<https://perma.cc/BS9T-LUPT>]; see Matt Smith & Aura Bogado, *Immigrant Children Forcibly Injected with Drugs at Texas Shelter, Lawsuit Claims*, TEX. TRIBUNE (June 20, 2018, 1:00 PM), <https://www.texastribune.org/2018/06/20/immigrant-children-forcibly-injected-drugs-lawsuit-claims> [<https://perma.cc/8TUZ-32QZ>] (recounting an experience where a child was actually injected without permission).

186. Cummings, *supra* note 185; see Smith & Bogado, *supra* note 185 (recounting an experience where a child was actually injected without permission).

187. Cummings, *supra* note 185.

188. See Wesley C. Brockway, *Rationing Justice: The Need for Appointed Counsel in Removal Proceedings of Unaccompanied Immigrant Children*, 88 U. COLO. L. REV. 179, 180–81 (2017) (discussing the underrepresentation of unaccompanied minors by legal counsel).

189. OFF. OF INSPECTOR GEN., *supra* note 103.

190. Matter of A-B-, 27 I&N Dec. 316, 320 (A.G. 2018).

191. See U.S. CITIZENSHIP & IMMIGR. SERV., U.S. DEP'T. OF HOMELAND SECURITY, REFUGEES & ASYLUM (Nov. 12, 2015), <https://www.uscis.gov/humanitarian/refugees-asylum> [<https://perma.cc/M9N5-6L82>] (explaining refugee and asylum status).

192. See Matter of A-B-, 27 I&N Dec. at 318.

193. See *id.* at 330 (A.G. 2018) (citing Matter of E-A-G-, 24 I&N Dec. 591, 594 (BIA 2008)).

to flee to another country for refuge.¹⁹⁴ The Immigration Nationality Act (INA) defines “refugee” as:

any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which a person last habitually resided, and who is unable or unwilling to return to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion ...¹⁹⁵

The Immigration and Nationality Act (INA) does not define persecution on account of membership in a particular social group.¹⁹⁶ This issue was addressed by the Board of Immigration Appeals (BIA) based on four grounds of persecution: race, religion, nationality or political opinion.¹⁹⁷ Generally, gang-related claims do not qualify for asylum due to lack of credibility.¹⁹⁸

An individual seeking asylum must have a credible fear of persecution.¹⁹⁹ However, the individual seeking asylum carries the burden of establishing a nexus between the alleged persecution and one of the statutory grounds.²⁰⁰ Further, granting asylum is discretionary.²⁰¹ As discussed, the person seeking asylum must bear the burden and meet certain statutory grounds, but they also must prove that their case merits asylum as a matter of discretion.²⁰² There are certain limitations or “disqualifications” as well, such as previous criminal convictions.²⁰³

194. *See id.* at 344 (A.G. 2018) (detailing a specific account where an immigrant was forced to flee their country).

195. Immigration Nationality Act § 101(a)(3), 8 U.S.C. § 1101(a)(42)(A) (2014).

196. *See Matter of A-B-*, 27 I&N Dec. at 318.

197. *See id.* (citing *Matter of Acosta*, 19 I&N Dec. 2011, 233 (BIA 1985)).

198. *See id.* at 320 (citing 8 U.S.C. § 1225(b)(1)(B)(v)).

199. *See* 8 U.S.C. § 1225(b)(1)(B)(v) (2019) (defining a “credible fear of persecution” as a “significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish asylum under section 1158 of this title. [8 U.S.C. § 1158].”).

200. *See Matter of A-B-*, 27 I&N Dec. at 338.

201. *See* 8 U.S.C. § 1158(b)(1)(A) (2009) (providing the Attorney General broad discretion in granting asylum determinations).

202. *See* 8 U.S.C. § 1158(b)(1)(B)(i) (2009) (understanding the burden requirements in establishing asylum).

203. 8 U.S.C. §§ 1158(b)(2)(A)–(B) (2009).

“Victims of gang violence often come from all segments of society, and they possess no distinguishing characteristic or trait that would readily identify them as members of such a group.”²⁰⁴ The BIA has established that a “particular social group must not be ‘amorphous, overbroad, diffuse, or subjective,’ and ‘not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.”²⁰⁵ There is no clear, bright-line rule which determines the specific characteristics in deciding whether one particular group falls within the meaning of 8 U.S.C. § 1101(a)(42)(A).²⁰⁶ The BIA determined that groups who are resistant or susceptible to gang violence are “too diffuse to be recognized as a particular social group.”²⁰⁷

This is not the case for children who are part of a vulnerable social class.²⁰⁸ In *Matter of A-B-*,²⁰⁹ the BIA stated that individuals seeking asylum based on gang violence “are often not exposed to more violence or human rights violence than other segments of society.”²¹⁰ However, this is not the case when the individual exposed is a child.²¹¹ A child exposed to ruthless violence experiences significant damage to their psyche.²¹²

For asylum purposes, the individual seeking asylum must establish that he or she “is a refugee within the meaning of section 1101(a)(42)(A)” of the INA.²¹³ The individual must be “unable or unwilling to return to, and is unable or unwilling to avail him[/her]self of the protection, of that country due to a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political

204. See *Matter of A-B-*, 27 I&N Dec. at 335 (A.G. 2018).

205. See *id.* (citing *M-E-V-G-*, 26 I&N Dec. at 239).

206. See Immigration Nationality Act, *supra* note 195; see also *Matter of A-B-*, 27 I&N Dec. at 325–26 (A.G. 2018) (describing the difficulty in complying with an ambiguous burden).

207. See *Matter of A-B-*, 27 I&N Dec. at 335 (A.G. 2018) (citing *Constanza v. Holder*, 647 F.3d 749, 754 (8th Cir. 2011)); 8 U.S.C. § 1158(b)(1)(A) (2009).

208. See G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) (emphasizing children are “entitled to special care and assistance”).

209. See 27 I&N Dec. at 335 (A.G. 2018).

210. See *Matter of A-B-*, 27 I&N Dec. at 335 (A.G. 2018) (citing *Velasquez v. Sessions*, 866 F.3d 188, 199 (4th Cir. 2017), quoting *Matter of S-E-G-*, 24 I&N Dec. 579, 587 (BIA 2008)).

211. See Linton et al., *supra* note 130 at 1, 2 (detailing how children are particularly vulnerable to traumatic events which can have life-long consequences).

212. GREELEY ET. AL. *supra* note 32.

213. See 27 I&N Dec. at 325 (citing Immigration Nationality Act §101(a)(42)(A), 8 U.S.C. §1101(a)(42)(A) (2014)).

opinion.”²¹⁴ The BIA and federal courts have repeatedly stated that the phrase “membership in a particular social group” is ambiguous.²¹⁵ A “particular social group” is not defined by the INA or federal regulations.²¹⁶ Furthermore, there is no clear evidence as to what the legislature intended “particular social group” to mean.²¹⁷ In the broadest literal meaning, the phrase is completely open-ended, as any group of people could be described as a “particular social group.”²¹⁸ On its own, the statutory language is not very instructive.²¹⁹ Moreover, the attorney general has the authority to construe terms liberally.²²⁰ The Supreme Court also noted that “administrative agencies are not bound by the prior judicial interpretations of ambiguous statutory interpretations.”²²¹ The rationale is that Congress, when it left a statute open to interpretation, meant for all ambiguous statutory language to be resolved by the desired agency instead of the courts.²²² Therefore, the authority to evaluate the ambiguous term remains within the discretion of the agency enforcing the statute.²²³

Furthermore, “[i]n a number of opinions spanning several decades, the Board has articulated and refined the standard for persecution on account of membership in a ‘particular social group’ so that this category is not boundless.”²²⁴ The BIA stated that persecution on account of membership in a particular social group is construed to mean “persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable, characteristic.”²²⁵ It is applicable to individuals who are either unable by their own actions or, as a matter of conscience, are forced to avoid persecution.²²⁶ There must be some understanding of how the

214. 8 U.S.C. §1101(a)(42)(A) (2014).

215. See 27 I&N Dec. at 326 (citing *Matter of Acosta*, 19 I&N Dec. at 232-33).

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.* 27 I&N Dec. 316, 326 (A.G. 2018).

221. See *id.* at 327 (citing *Matter of R-A-*, 24 I&N Dec. 629, 631 (A.G. 2008)).

222. *Id.*

223. *Id.*

224. *Id.*

225. See *id.* (citing *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985)).

226. *Id.*

immutable characteristics shared by the group are understood in the individual's country of origin, so the BIA can understand that the potential persecutors, in fact, see that these characteristics warrant suppression.²²⁷ Over the years, the BIA has refined its interpretation of "particular social group" on a case-by-case basis.²²⁸

B. *Special Immigrant Juvenile Status*

Another option currently in place for unaccompanied minors is the Special Immigrant Juvenile Status (SIJ).²²⁹ "SIJ Status is a humanitarian form of relief available to noncitizen minors," including unaccompanied minors.²³⁰ A juvenile seeking an SIJ cannot do so to obtain immigration benefits, but rather, to seek relief from abuse, neglect or abandonment, or a similar basis under state law.²³¹ To apply for an SIJ, the applicant must be under 21 years of age and currently living in the United States.²³² In addition, an application for an SIJ requires that the:

- (1) [minor] [must be] dependent on the court, or in the custody of a state agency or department or an individual or entity appointed by the court; (2) [minor] cannot be reunified with one or both of [the] parents because of abuse, abandonment, neglect, or a similar basis under state law; AND (3) it is not in [the] best interest to return to the country or nationality or last habitual residence of [the] parents.²³³

For the first element, a juvenile court in the United States must have issued a court order stating that the minor is dependent on the court.²³⁴ For the second element, the termination of parental rights is not a

227. *See id.* at 332 (citing *Matter of R-A-*, 22 I&N Dec. 629, 918 (A.G. 2008)).

228. *See id.* at 331 (citing *W-G-R-*, 26 I&N Dec. 208 (BIA 2014)).

229. U.S. CITIZENSHIP & IMMIGR. SERV., U.S. DEP'T. OF HOMELAND SECURITY, SPECIAL IMMIGRANT JUVENILES (Apr. 10, 2018), <https://www.uscis.gov/green-card/sij> [<https://perma.cc/XBD6-9FLT>].

230. AM. IMMIGR. COUNCIL., A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES, AND RESPONSES 4 (June 26, 2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/a_guide_to_children_arriving_at_the_border_and_the_laws_and_policies_governing_our_response.pdf [<https://perma.cc/ZY3U-QAKW>].

231. U.S. CITIZENSHIP & IMMIGR. SERV., *supra* note 229.

232. *Id.*

233. *Id.*

234. U.S. CITIZENSHIP & IMMIGR. SERV., U.S. DEP'T. OF HOMELAND SECURITY, POLICY MANUAL – CHAPTER 2 ELIGIBILITY REQUIREMENTS (June 6, 2019), <https://www.uscis.gov/policy-manual/Print/PolicyManual-Volume6-PartJ-Chapter2.html> [<https://perma.cc/E3GV-F5Y8>].

prerequisite, but only a finding that the child is unable to be with one or both of their parents due to that parent's treatment of the child under the state's welfare laws.²³⁵ For example, it must be the juvenile's parent and not merely a guardian who terminates parental rights.²³⁶ Additionally, if there is a claimed parent—usually a father—who is not listed on the juvenile's birth certificate, it requires further evidentiary documentation from the court.²³⁷ Under state law, the presumed father is generally named on the birth certificate.²³⁸ Lastly, the child's best interest standards are followed.²³⁹ The state court must determine whether it is in the child's best interest to be placed in the United States.²⁴⁰ However, finding that it is in the child's best interest to stay in the United States does not eliminate the possibility that the child's country of origin is also in the best interest of the child.²⁴¹ The state court determines the standard, and federal law does not require the state to make any further analysis other than what is required under state law.²⁴² The SIJ allows for the juvenile to adjust status and obtain lawful permanent residency.²⁴³

C. *Unaccompanied Refugee Minors Program*

Again, unaccompanied minors are treated like foster children.²⁴⁴ In an effort to find permanent placements, some unaccompanied minors are placed in long-term foster care.²⁴⁵ To receive an unaccompanied minor, a foster parent must meet the same requirements as if they were going to foster an American child in the foster care system.²⁴⁶ The two organizations that assist in fostering placement coordination are the

235. *Id.*

236. *Id.*

237. *Id.*; see 8 C.F.R. § 204.11(d) (stating that the initial documents include a "birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age.").

238. U.S. CITIZENSHIP & IMMIGR. SERV., *supra* note 234.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. OFF. OF REFUGEE RESETTLEMENT, *supra* note 166.

245. *Id.*

246. *See id.* ("ORR requires that all foster care parents be fully licensed by their state.").

United State Conference of Catholic Bishops and the Lutheran Immigration and Refugee Services.²⁴⁷ These organizations train foster families with cross-cultural experiences, interest, and sensitivity.²⁴⁸ They also provide intensive, culturally sensitive, trauma-informed case management.²⁴⁹ The children placed in foster care are able to attend public school and integrate into American society.²⁵⁰

IV. SOLUTIONS FOR PROTECTING VULNERABLE UNACCOMPANIED CHILDREN

A. *Improving Mental Health Treatment for Vulnerable Immigrant Children*

One of the most important needs for migrant children is mental health treatment for those suffering from PTSD or other mental health conditions.²⁵¹ To provide these children with adequate treatment, mental health practitioners must keep their minor patient's culture in mind.²⁵² Mental health practitioners must consider specific cultural sensitivities while maintaining ethical standards.²⁵³ Cultural competency has three main characteristics.²⁵⁴ First, cultural sensitivity—which requires recognizing and appreciating diversity.²⁵⁵ Second, cultural knowledge—this entails “the factual understanding of basic anthropological knowledge about cultural variation” through reading, research, expert consultation, as well as meaningful interactions with a community made up of people with diverse backgrounds.²⁵⁶ Lastly, cultural empathy, which is the ability to engage emotionally with

247. *Id.*

248. *Foster Care*, U.S. CONF. OF CATH. BISHOPS (2019) <http://www.usccb.org/issues-and-action/marriage-and-family/children/foster-care.cfm> [<https://perma.cc/RE9W-YW57>].

249. *Id.*

250. OFF. OF REFUGEE RESETTLEMENT, *supra* note 166.

251. LAURA WEISS ROBERTS, A CLINICAL GUIDE TO PSYCHIATRIC ETHICS 144 (2016).

252. *See* ROBERTS, *supra* note 251 (noting psychiatrists and other mental health professionals must consider the patient's cultural sensitivities, and their own professional ethical standard).

253. *See id.* (affirming psychiatrists practice cultural competency given their increasing multicultural patient population).

254. *Id.*

255. *Id.*

256. *Id.*

an individual's cultural perspective.²⁵⁷ Additionally, this model sets aside cultural stereotypes and acknowledges cultural differences.²⁵⁸ Unquestionably, unaccompanied minors experience physical and emotional abuse during their perilous journey.²⁵⁹ Once these children reach their families, or enter a new environment in a new country, they have a difficulty adjusting to their new surroundings.²⁶⁰ There is no designated organization in charge of the mental health of migrant children²⁶¹ and there is a global need for mental health services for these minors to be able to integrate into their new society, to thrive, and contribute to its economy.²⁶² Presently, there is no collaboration between countries to address mental health issues in migrant children.²⁶³ In fact, "the lack of a unified approach has resulted in such youth tending to fall through the cracks of safety nets developed to protect them."²⁶⁴ Furthermore, there is no legal framework in place for unaccompanied minors.²⁶⁵

1. *Mental Health Treatment Under Sponsor Custody*

The utilization of detention centers to deter and manage unaccompanied minors is a contradictory approach to helping children.²⁶⁶ It goes against the best interest of the child.²⁶⁷ Detaining children must be the last resort, not the first and only measure.²⁶⁸ If detention is to be used, it must be used as infrequently and as humanely

257. *Id.*

258. *Id.*

259. Etiony Aldarondo, et. al., *Promoting the Well-Being of Unaccompanied Immigrant Minors*, CREATING INFRASTRUCTURES FOR LATINO MENTAL HEALTH 195, 201 (Lydia P. Buki & Lissette M. Piedra eds., 2011).

260. *Id.*

261. See Michelle L. Burbage & Deborah Klein Walker, *A Call to Strengthen Mental Health Supports for Refugee Children and Youth*, NAT'L ACAD. OF MED. (Aug. 27, 2018) <https://nam.edu/a-call-to-strengthen-mental-health-supports-for-refugee-children-and-youth/> [<https://perma.cc/N4RL-W724>] (commenting ORR focuses on overall health promotion, but criteria for services varies by state).

262. Aldarondo, et. al., *supra* note 259 at 195, 205.

263. *Id.*

264. *Id.* at 195, 201.

265. *Id.*

266. BHABHA, *supra* note 17 at 257.

267. *Id.*

268. *Id.*

as possible.²⁶⁹ Research conducted by psychologists prove that unaccompanied minors face a higher risk of mental illness compared to the general public.²⁷⁰ Due to the high levels of victimization and the unaccompanied minor's exposure to trauma coupled with the lack of adequate mental health treatment services, they are at higher risk for long-term consequences.²⁷¹ These consequences include the inability to regulate emotions and behaviors, which may be masked as rage, fear, shame, substance abuse or self-injury.²⁷² Psychological research indicates that unaccompanied minors need emotion regulation, goal setting, and goal striving—not forced psychotropic drugs.²⁷³ Placing an unaccompanied minor with their sponsor will eliminate forced medication.²⁷⁴ The continuous practice of drugging children in detention centers while they await their immigration hearings is not helping children or society.²⁷⁵ The experiences and environments that an individual is exposed to have a significant impact on their mental health.²⁷⁶ Children who are exposed to poverty, abuse, and discrimination are more likely to develop mental health conditions.²⁷⁷ Although not frequently exposed, there is evidence of a correlation between childhood trauma and a mental health disorder in the future.²⁷⁸

269. *Id.*; see Greeley, et al., *supra* note 32 at 13 (“[i]mmigration advocates across the U.S. and globally continue to shed light on the treatment of child migrants and the need to ensure they are treated humanely and ethically.”).

270. Collier, *supra* note 122 at 58, 60.

271. *Id.* at 61.

272. *Id.*

273. See generally El-Awad, et al., *supra* note 27 (arguing the necessity to support unaccompanied refugee minors in their goal setting and goal striving because they carry many unrealistic wishes and unattainable goals, which can be threatening to their mental health).

274. See *Complaint*, *supra* note 65 at ¶4 (stating ORR knowingly places children in residential treatment and detention facilities where they will be administered powerful psychotropic medication for an undetermined time without safeguards such as parent consent).

275. See *id.* at ¶¶112–113 (arguing that few psychotropic medications have been approved by the U.S. Food and Drug Administration given the common, serious, long-lasting effects such as psychosis, seizures, movement disorders, suicidal ideation, aggression, extreme weight gain, and organ damage).

276. See Ailbhe Finn, *Our Approach to Mental Health Isn't Working*, OPEN SOC'Y FOUND. (Oct. 10, 2017), <https://www.opensocietyfoundations.org/voices/our-approach-mental-health-isn-t-working> [https://perma.cc/LL5V-FK2E] (citing clinical psychologist Richard Bentel, who reported that the link between childhood misfortune and future psychiatric disorder is as strong as the link between smoking and lung cancer).

277. Finn, *supra* note 276.

278. *Id.*

To truly help and protect vulnerable unaccompanied minors, adequate mental health services must be made accessible to them.²⁷⁹ Every child must be placed with a sponsor when available.²⁸⁰ The minor can then integrate in American society, attend public school, and receive counseling through the school.²⁸¹ Unaccompanied minors do not qualify for Medicaid or government benefits, such as public welfare, that are available to American citizens.²⁸² Psychologists continually find that building trust between a child and a therapist is the first step to treatment.²⁸³ One of the challenges faced by therapists, regardless of where the therapy takes place, is bonding with the child.²⁸⁴ Many of these children do not let their guard down because of the trauma they have experienced.²⁸⁵ Once successful, the therapist cannot break the trust by disseminating the child's private mental health records.²⁸⁶ The therapist must be knowledgeable with the child's culture and language.²⁸⁷ Adopting a trust-driven, culturally cognizant framework will be a step of healing for these children.

In the alternative, a child without a sponsor or a foster care placement who must await for a hearing under custody of ORR must be provided access to an education.²⁸⁸ For example, allowing children to attend public school would establish a sense of normality—a routine.²⁸⁹ Children will feel more secure rather than unpredictability due to their

279. *See id.* (signifying the importance of mental health for vulnerable classes such as minors).

280. Collier, *supra* note 122 at 58, 61.

281. *Id.*

282. *See id.* (noting the hardships and challenges unaccompanied minors face).

283. *Id.* at 58, 61–62.

284. *See id.* at 62 (indicating the tools therapist use when talking with unaccompanied minors, such as not using the words “therapy” and “counseling” with the children.).

285. *Id.* at 58, 61–62.

286. *See generally* 45 CFR § 160.103 (2019) (governing the confidentiality of medical records and under the circumstances when the records may be disclosed).

287. Collier, *supra* note 122 at 58, 62.

288. *See id.* at 58, 61–62 (asserting undocumented children can receive social services by attending public school, including mental health counseling, given they are ineligible for Medicaid and otherwise unable to afford treatment).

289. *See* Sarnata Reynolds, “It’s a Suicide Act to Leave or Stay”: *Internal Displacement in El Salvador* REFUGEES INT’L (Jul. 30, 2015), <https://www.refugeesinternational.org/reports/2015/9/30/its-a-suicide-act-to-leave-or-stay-internal-displacement-in-el-salvador> [<https://perma.cc/5BB7-GWRW>] (suggesting the government of El Salvador should consider access to education when deciding where to relocate displaced persons).

living conditions.²⁹⁰ Children who attend public school, despite living in an immigration detention shelter, will have access to a school counselor.²⁹¹ Instead of spending billions on private immigration detention centers²⁹² that cause more harm to vulnerable children and their emotional psyche long-term, money must go to mental health counseling for school counselors.²⁹³ Many of these children will attend under-funded public schools.²⁹⁴ These children will not be able to receive adequate mental health treatment to allow them to integrate into American society until the best interest of the child framework is followed.²⁹⁵

It is imperative that social workers working in detention shelters be aware of what drove these children to enter the United States.²⁹⁶ This calls for understanding the high rates of trauma, attachment disruptions, and the immigration system.²⁹⁷ As previously discussed, when an unaccompanied minor flees gang-violence and discloses to the shelter-provided counselor that he or she is fleeing gang-violence, it is imprudent for the social worker to label the child as a gang member or as having

290. Reynolds, *supra* note 289.

291. See Kiara Alvarez and Margarita Alegria, *Understanding and Addressing the Needs of Unaccompanied Minors*, AM. PSYCHOL. ASS'N (June 2016), <https://www.apa.org/pi/families/resources/newsletter/2016/06/immigrant-minors.aspx> [<https://perma.cc/32T3-2HQB>] (suggesting school counselors can set up a welcoming environment for newly enrolled youth, advocate for strategies to help families navigate unfamiliar systems, support for direct service staff in addressing trauma, and be in a position to facilitate immigration cases by conducting evaluation reports to be used in asylum cases).

292. T.J. Raphael & Oliver Lazarus, *Immigration Detention Quotas Cost Taxpayers Billions—A 'Mindless Policy' Says One Congressman*, PRI (Aug. 2, 2017, 2:00 PM), <https://www.pri.org/stories/2017-08-01/immigration-detention-quotas-cost-taxpayers-billions-mindless-policy-says-one> [<https://perma.cc/3XLZ-URRG>].

293. See Greeley, et. al., *supra* note 32 (arguing child and adolescent trauma can lead to difficulties in school, and increase the risk of dropping out of school, resulting in increasing the likelihood of obtaining the skills for rewarding and prosperous employment).

294. See *id.* (reporting that not all public schools have the funds to provide all school-based health services recommended by the state of Texas).

295. See *id.* (arguing detention is never in the best interest of the child and children should be provided with mental health services such as screening and treatment for PTSD).

296. See Alvarez & Alegria, *supra* note 291 (suggesting social workers can work with populations that have related challenges such as unaccompanied minor children, and asylum seekers).

297. See *id.* (arguing that a lot can be accomplished through evidence-based-trauma-focused therapy, family therapy or multilevel approaches).

gang affiliation.²⁹⁸ There is limited literature on favorable approaches for mental health services to unaccompanied minors, however, there are established approaches in psychology that can be adopted to help child victims of gang violence.²⁹⁹ Receiving therapy at school is an approach that can be implemented.³⁰⁰ Through school-based therapy, children are exposed to society and have access to a school counselor, rather than feel confined to the parameters of a detention center.³⁰¹

2. *Exclusion of Mental Health Records in Immigration Hearings*

The collaboration between social worker and attorney is necessary in order to protect unaccompanied minors.³⁰² This cooperation will prevent private mental health information from being disseminated without consent in immigration court and protect the child.³⁰³ All parties involved can ensure the protection of the child's best interest by following the best interest standard.³⁰⁴ Immigration Judges carefully control how the proceedings are conducted.³⁰⁵ The judge's role is to ensure a fundamentally fair hearing.³⁰⁶ An Immigration Judge should

298. See Bob Ortega et al., *supra* note 180] (alleging that a child's fears and dangers were used against him and he was placed in a high-security detention center despite his record of good behavior).

299. See Alvarez & Alegria, *supra* note 291 (advocating that unaccompanied minors can participate in evidence-based-trauma-focused therapy, family therapy or multilevel approaches to address the interface between the child, family, school, and other institutions).

300. See *id.* (suggesting children needing mental health services can receive Trauma Systems Therapy through school-based psychotherapy groups).

301. See *id.* (detailing what can be done to alleviate the effects of the detention center).

302. See *id.* (recognizing Child Advocacy Centers provide a safe place for children to be interviewed for child development and legal proceedings).

303. See OFF. OF REFUGEE RESETTLEMENT, *supra* note 119 (enforcing accountability systems for caregivers to keep child's mental health records confidential).

304. See *id.* (enforcing accountability systems for caregivers to keep child's mental health records confidential).

305. See Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Child., Young Ctr. for Immigrant Child. Rts. at the U. of Chicago, *Framework for Considering the Best Interests of Unaccompanied Children* (May 2016), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/Best-Interests-Framework.pdf> [<https://perma.cc/E687-HN34>] (emphasizing immigration judges can properly uphold the law in a way that takes into account the best interest of the child).

306. See *Shaughnessey v. United States*, 345 U.S. 206, 212 (1953) (stating immigration proceedings must conform to traditional standards of fairness encompassed in due process); *Reno*, 507 U.S. at 306 (holding that the Fifth Amendment entitles aliens to due process of law); *Matter of*

refer a child to an advocate if there are concerns regarding the child's capacity.³⁰⁷ Children are vulnerable and must be recognized as children.³⁰⁸ Most importantly, judges must be culturally sensitive when dealing with a child's case.³⁰⁹ Knowledge of the child's development and the impact of the trauma the child has suffered are paramount.³¹⁰ An Immigration Judge cannot base his or her decision solely on a statement the child made to a counselor.³¹¹ Keeping with the best interest standard, Immigration Judges must issue a qualified protective order if psychiatric records are to be included in the child's immigration case.³¹² Private psychiatric notes are outside the scope of the therapist's report and require a qualified protective order if an Immigration Judge believes those notes are necessary.³¹³ Once obtained, psychiatric notes cannot be used against the child.³¹⁴

M-D-, 23 I&N Dec. 540, 542 (BIA 2002) (stating that the due process rights required in removal proceedings include the right to a full and fair hearing).

307. Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Child., *supra* note 305; *contra* EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, OPPM 17-03, *Guidelines For Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children* (Dec. 20, 2017) (abrogated OPPM 17-01) (neither the Immigration and Nationality Act or regulations permit Immigration Judges to appoint a legal representative or a guardian ad litem).

308. *See* EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, OPPM 08-01: *Guidelines For Facilitating Pro Bono Legal Services* (Mar. 10, 2008) (instructing judges to facilitate pro bono representation whenever minors are involved given the particular vulnerability of minor respondents); *see also* Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Child, *supra* note 305.

309. *See* EXEC. OFFICE FOR IMMIGRATION REVIEW, *supra* note 307 (instructing immigration judges to remain unbiased arbitrators of the law even though juvenile cases may present sympathetic allegations); *see also* Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Child, *supra* note 305.

310. Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Child., *supra* note 305.

311. *Id.*

312. Health Information Privacy, U.S. DEPT. OF HEALTH & HUM. SERV. (Jan. 07, 2005), <https://www.hhs.gov/hipaa/for-professionals/faq/711/may-a-covered-entity-not-party-to-legal-proceedings-disclose-information-by-court-order/index.html> [<https://perma.cc/99X3-VVJM>]; *see* Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Child., *supra* note 305 (understanding how the best interests framework pervades every aspect of the immigration process).

313. *See* U.S. DEPT. OF HEALTH & HUM. SERV., note 312 (detailing the requirements for a protective order).

314. *See id.* (discussing the only way that psychiatric notes can be obtained).

B. Allowing Asylum Claims for Unaccompanied Minor Victims of Gang Violence

To request asylum in the United States, an individual seeking asylum must have a well-founded fear of prosecution—a generalized fear of gang violence is insufficient.³¹⁵ In gang-related asylum cases, displaying a well-founded fear is not difficult—establishing that the fear is “on account of” one of the protected classes is the challenge.³¹⁶ The asylum seeker must show that they will suffer persecution on account of their race, political opinion, religion, nationality or membership in a particular social group.³¹⁷ Additionally, the asylum seeker must establish that the persecution is at the hands of the government or third party, which the government is unable or unwilling to control.³¹⁸ Applicants making these claims bear the burden of proving the allegations.³¹⁹ However, when asylum officers review applications, they do not spend more than one hour reviewing the application.³²⁰ This review determines whether the applicant has a “credible fear of persecution or torture.”³²¹ This limited review is not sufficient to make such a determination which, often times, results in disparate findings among officers.³²²

315. See Immigration Nationality Act, *supra* note 195 (listing the five protected grounds for asylum); see, e.g., *Eduard v. Ashcroft*, 379 F.3d 182, 190 (5th Cir. 2004) (an applicant’s fear of persecution cannot be based solely on general violence and civil disorder); see *Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009) (criminal violence based on financial motives is not connected to a protected ground); *Matter of Mogharrabi*, 19 I&N Dec. 439, 447 (BIA 1987) (aliens fleeing general conditions of violence and upheaval do not qualify for asylum); *Matter of A-B-*, 27 I&N Dec. 316, 320 (A.G. 2018) (reasoning claims pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum).

316. Immigration Nationality Act of 2018 §101(a)(3), U.S.C. §1101(a)(42)(A) (2018); see Galya Ruffer, *Gang-Based Asylum Claims*, REFUGEE LEGAL AID INFO. FOR LAW. REPRESENTING REFUGEES GLOBALLY, <http://www.refugeelaidinformation.org/gang-based-asylum-claims> [<https://perma.cc/2BXL-EFAC>].

317. Immigration Nationality Act, *supra* note 195; see Ruffer, *supra* note 316.

318. Immigration Nationality Act, *supra* note 195; Ruffer, *supra* note 316; see *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (providing that persecution is harm with the acquiescence of the government);

319. 8 U.S.C. § 1158(b)(1)(B) (2019).

320. Howard Zonana, *Commentary: The Role of Forensic Psychology in the Asylum Process*, 38 J. OF THE AM. ACAD. OF PSYCHIATRY AND THE L. 499, 500 (2010), <http://jaapl.org/content/jaapl/38/4/499.full.pdf> [<https://perma.cc/D3CV-H269>].

321. *Matter of M-S-*, 27 I&N Dec. 509, 512 (A.G. 2019); see Zonana, *supra* note 320.

322. See *Matter of M-S-*, 27 I&N Dec. at 512 (reasoning if the alien does not establish a credible fear, the asylum officer shall order the alien removed from the United States without further hearing or review pursuant to INA § 235(b)(1)(B)(iii)(I)); Zonana, *supra* note 320.

When it comes to cases regarding children, the United States must do more to protect them. A PTSD diagnosis is based purely on self-reports, as are most psychiatric diagnosis.³²³ For child claims, children are the story-tellers; their analysis and “self-report” are based solely on their ability to talk about issues that—for some are uncomfortable to talk about.³²⁴ In a survey of 104 Salvadoran children, approximately sixty-six percent reported leaving El Salvador due to violence at the hands of criminal syndicates and lack of protection from such violence.³²⁵ Day-to-day confrontations included “evading extortion; witnessing murders; and navigating threats to themselves, and their families, friends and neighbors.”³²⁶ The child’s first instinct is to leave without a plan.³²⁷ All they want to do is live.³²⁸

Shame accompanies abuse.³²⁹ Children may have difficulty articulating or narrating their experiences of abuse, especially in intimidating environments such as a detention center.³³⁰ Furthermore, some children may not completely recognize their experiences as abuse because an abusive environment is all they have ever known.³³¹ When children, or even adults, discuss sexual violence they have a greater difficulty articulating details due to the highly sensitive nature and social stigma associated with sexual violence.³³² For these reasons, it is particularly important that those seeking asylum—children included—are provided with adequate mental health services and undergo a forensic psychological evaluation.³³³ A forensic interview of a minor is a developmentally sensitive and legally sound technique of obtaining factual information pertaining to allegations of abuse or exposure to

323. Zonana, *supra* note 320.

324. See UNHCR, *supra* note 40 (detailing how children speak of their fears and the experiences they have had).

325. *Id.*

326. *Id.*

327. See *id.* (understanding that these families have been forcibly displaced and not able to comprise a plan).

328. See *id.* (highlighting the reason these children leave their countries of origin is their ultimate desire to live).

329. *Id.*

330. See *id.* (understanding the difficulties of discussing traumatic experiences with children).

331. *Id.*

332. *Id.*

333. ROBBINS, *supra* note 30.

violence.³³⁴ Forensic interviews are conducted by a competently-trained, neutral psychologist who utilizes research and practice-informed methods to determine whether abuse or exposure to violence has occurred.³³⁵

The forensic psychologist must record the video interview with the child for two reasons: 1) to preserve a record of the interview and 2) for easy accessibility of the video if the forensic psychologist needs to make their findings.³³⁶ The psychologists' most important practices are avoiding bias and building rapport early in the interview.³³⁷ Additionally, other best practices in accordance with the National Institute of Child Health and Human Development (NICHD) include: having a practice interview, providing the child with ground rules, asking the child open-ended questions, and encouraging the child to provide a free narrative, while at the same time avoiding pressure, coercion, and suggestions through disseminating information to the child by asking leading questions, or by repeating questions.³³⁸ During the interview, a forensic psychologist must use a child-friendly room and remove any distracting objects.³³⁹ Furthermore, "prior to the interview, the interviewer should also consider questions that can be used to test alternative hypotheses."³⁴⁰ The interviewer must determine if the alleged abuse or traumatic event occurred.³⁴¹ It is possible that a portion of the child's allegations are comprised of "confabulated details that are not accurate or has been influenced to make up additional details that are not true."³⁴² Part of building rapport with the child is to inform them that it is okay to answer with "I don't know" or "I don't understand."³⁴³

334. *Id.* at 334; *see e.g.*, OFF. OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUM. SERV., ORR GUIDE: CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED, (Jan. 30, 2015), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied> [<https://perma.cc/8D95-6TZG>] (describing ORR's definition of training for Mental Health Staff as vague because it does not list what training actually entails).

335. ROBBINS, *supra* note 30 at 334.

336. *Id.* at 336.

337. *Id.* at 336–338.

338. *Id.* at 336–337.

339. *Id.* at 337.

340. *Id.*

341. *See id.* at 338 (using the questioning to test hypotheses and determine whether there was abuse).

342. *Id.* at 337.

343. *Id.*

The interviewer can use basic questions to establish a baseline; for example, asking the child about something they can relate to or connect with in order to determine if the child can differentiate between true or false statements.³⁴⁴ However, if the child asks the forensic psychologist spontaneous questions during the interview, the forensic psychologist must proceed to answer them to continue building rapport.³⁴⁵ Once rapport is established, it will manifest a relaxed environment because the child will feel supported.³⁴⁶

Pursuing forensic psychology to interview unaccompanied minors that have a well-founded fear of returning to their home country of origin will require that the interviewers are properly trained.³⁴⁷ This requires ongoing supervision to ensure the interviewer is using the best practices protocol.³⁴⁸ The skills which forensic psychologists must possess include the ability to ask the child open-ended questions to elicit narrative responses, the ability to rule out alternative explanations via hypotheses testing, and being able to assess the child's developmental and cultural factors.³⁴⁹

C. Re-establishing Pilot Programs that Have Previously Worked

It is more economical to allow asylum seekers to live in America under close supervision.³⁵⁰ Placing them in immigration detention centers costs the United States approximately \$150 per day.³⁵¹ In 2017, there were 323,591 immigration detainees.³⁵² Given the cost associated with detention, the United States must reinstate the Intensive Supervision

344. *See id.* (outlining techniques for interviewing with diverse populations).

345. *See id.* (signifying the importance of rapport and comfort between the child and psychologist).

346. *See id.* (describing the role of rapport in interviewing diverse individuals such as unaccompanied minors).

347. *See id.* at 339 (highlighting the importance of the interviewer's qualifications when interviewing children who have been through trauma).

348. *See id.* at 338 (highlighting the importance of interviewing protocols in order to ensure the psychological well-being of unaccompanied minors).

349. *Id.*

350. *See* GLOBAL DETENTION PROJECT, UNITED STATES IMMIGRATION DETENTION (May 2016), <https://www.globaldetentionproject.org/countries/americas/united-states> [<https://perma.cc/XQN8-ET4Z>] (describing officials and advocates agreement that alternative programs are both more humane and less costly).

351. *Id.*

352. *Id.*

Appearance Program (ISAP)—the least restrictive alternative to detention.³⁵³ ISAP ended in 2017 after the Trump Administration shut it down to keep immigrants in detention centers.³⁵⁴ Under ISAP, United States Immigration and Customs Enforcement (ICE) was permitted to release asylum seekers into American society.³⁵⁵ ICE kept track of these asylum seekers via electronic monitors.³⁵⁶ Further, the asylum seekers' release was conditioned upon their appearance in immigration court.³⁵⁷

ISAP had 99.6% compliance with appearance at their immigration hearings.³⁵⁸ Approximately 91.1% complied with their immigration court order.³⁵⁹ Of the 4.9% who absconded, 4% were arrested by other law enforcement agencies.³⁶⁰ The cost of this program is approximately \$8.37 per day.³⁶¹

353. OFF. OF INSPECTOR GEN., U.S. DEP'T. OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT'S ALTERNATIVES TO DETENTION (REVISED) at 2 (Feb. 4, 2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf [<https://perma.cc/4G32-ESQ5>].

354. WRITTEN TESTIMONY OF ICE ACTING DIRECTOR THOMAS HOMAN FOR A HOUSE COMMITTEE ON APPROPRIATIONS, SUBCOMMITTEE ON HOMELAND SECURITY HEARING TITLED "IMMIGRATION AND CUSTOMS ENFORCEMENT & CUSTOMS AND BORDER PROTECTION FY18 BUDGET REQUEST", U.S. DEP'T. HOMELAND SECURITY (June 13, 2017), <https://www.dhs.gov/news/2017/06/13/written-testimony-ice-acting-director-house-appropriations-subcommittee-homeland> [<https://perma.cc/F8CM-W6TY>].

355. OFF. OF INSPECTOR GEN., *supra* note 353.

356. *Id.*

357. *Id.*; see *What is the Intensive Supervision Appearance Program?*, LANDERHOLM IMMIGR. L. (July 24, 2017), <https://www.landerholmimmigration.com/blog/2017/july/what-is-the-intensive-supervision-appearance-pro/> [<https://perma.cc/9PWR-ZAKH>] ("[t]he Intensive Supervision of Appearance Program (ISAP) is a monitoring program for immigrants in deportation proceedings who have been released from detention. The goal of the program is to avoid detention and allow immigrants to live with their families and continue working while their deportation proceedings are pending.").

358. Alex Nowrasteh, *Alternatives to Detention are Cheaper than Universal Detention*, CATO INST. (June 20, 2018, 7:00 PM), <https://www.cato.org/blog/alternatives-detention-are-cheaper-indefinite-detention> [<https://perma.cc/Z3R5-WQ9C>].

359. See Nowrasteh, *supra* note 358 (individuals either complied with their court order or gained legal status).

360. *Id.*

361. OFF. OF INSPECTOR GEN., *supra* note 353 at 4; see e.g., Mirren Gidda, *Private Prison Company Geo Group Gave Generously to Trump and Now Has Lucrative Contract*, NEWSWEEK (May 11, 2017), <https://www.newsweek.com/geo-group-private-prisons-immigration-detention-trump-596505> [<https://perma.cc/3LS4-E8H9>] ("... GEO Corrections Holdings Inc., a subsidiary of the GEO Group, donated \$100,000 to the pro-Trump PAC Rebuilding America Now. Then, on November 1—seven days before the presidential election—it gave another \$125,000 to the organization."); Letter from Lawrence M. Noble, Counsel, The Campaign Legal Cent., to Mary

While ISAP was created for adult immigrants, its principle can be applied to unaccompanied minors by allowing minors to live with sponsors.³⁶² In February 2014, over 22,000 immigrants were enrolled in ISAP—all of which were living in American society with a family sponsor, costing the government approximately \$90 million dollars.³⁶³ Detention facilities cost nearly three times as much as ISAP—housing approximately 25,000 immigrants in detention facilities will cost tax payers an estimated \$233 million.³⁶⁴ The most economical and logical outcome is to allow unaccompanied minors to live with their sponsor pending the outcome of their immigration case.

CONCLUSION

The United States needs to help children who are victims of gang violence, brutality, and persecution.³⁶⁵ The universal standard, the best interest of the child, must govern all policy.³⁶⁶ Allowing children to integrate into society will bring a sense of security and eventually allow them to flourish.³⁶⁷ Children are more receptive when mental health practitioners are culturally sensitive; understand the rates of trauma and attachment disruptions; and are aware of the immigration system.³⁶⁸ The detention of children must be the last resort.³⁶⁹ In cases where a child must be in a detention shelter, the child must be in a least restrictive setting and have an established routine.³⁷⁰ It is imperative that the child

Beth deBeau, Paralegal, Fed. Elections Committee (Dec. 20, 2016), <http://www.campaignlegalcenter.org/sites/default/files/12-01-16%20MAN1%20followup%20letter%20pdf.pdf> [https://perma.cc/FSU8-CJL3] (“[b]y contributing to a super PAC closely associated with Donald J. Trump—the only presidential nominee to endorse private prisons—GEO Corrections Holdings, Inc. presumably sought to influence the federal government contracting process and to ensure that under the next administration the federal government would continue to offer it contracts.”).

362. LANDERHOLM IMMIGRATION LAW *supra* note 357.

363. *Id.*

364. Philip Elliott and W.J. Hennigan, *Exclusive: Navy Document Shows Plan to Erect ‘Austere’ Detention Camps* TIME (Jun. 22, 2018), <http://time.com/5319334/navy-detainment-centers-zero-tolerance-immigration-family-separation-policy/> [https://perma.cc/97AG-QMFS].

365. *See supra*, Part II of author’s piece.

366. Young Ctr. for Immigrant Child. Rts. at the U. of Chicago, *supra* note 305.

367. *See* Ewing, *supra* note 29 (detailing the benefits of integrating immigrant children into society).

368. *See* ROBERTS, *supra* note 251 at 143 (emphasizing the importance of learning cultural differences and past experiences to make a mental health diagnosis).

369. Young Ctr. for Immigrant Child. Rts. at the U. of Chicago, *supra* note 305.

370. *Id.*

build rapport with their counselor.³⁷¹ Lastly, cooperation between attorneys and mental health professionals will avoid future violations of a child's right to privacy.³⁷² By following the best interest standard, children will be protected.³⁷³ Children are a vulnerable class.³⁷⁴ If the child's guardian, policy makers, government, and society will not protect them, who will?

371. See Alvarez & Alegria, *supra* note 291 (understanding the importance of learning what the children have gone through in order to properly connect).

372. See *id.* (describing what must be done to protect the privacy and best interests of immigrant children).

373. See Young Ctr. for Immigrant Child. Rts. at the U. of Chicago, *supra* note 305 (detailing the best interest framework to ensure children are protected).

374. UNHCR, *supra* note 40.